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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7491 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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MUKESH KANAIYALAL LUHA SINDHI

Versus

DISTRICT MAGISTRATE

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Appearance:

MR ANIL S DAVE for Petitioner

MRS PUNANI AGP for Respondent No. 1, 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 16/06/1999

ORAL JUDGEMENT

Heard learned advocates for the respective parties.

2. The present petition, preferred under Article 226 of the Constitution of the India, is directed against the order of preventive detention dated 13th August, 1998

made by the District Magistrate, Panch Mahals, under the powers conferred upon him under Sub-section 2 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act [hereinafter referred to as, 'the Act']. The order was executed on the same date. The petitioner has been thus detained under the Act since 13th August, 1998. Pending this petition, on 7th September, 1998, the petitioner had, through his learned advocate, made a representation to the State Government against the order of detention and had also asked for a copy of the Search & Seizure Panchnama in respect of the offence registered as C.R No. 160 of 1998 in Godhara Taluka Police Station against the petitioner and two others. The said representation was rejected by the State Government and the order was communicated to the petitioner under the communication dated 11th September, 1998.

3. Amongst the other grounds, the validity of the impugned order of detention has also been challenged on the ground that the search and seizure panchnama in respect of an offence pending investigation is a vital document and a detenu is entitled to have a copy of the said document so as to enable him to make an effective representation against the order of detention. In absence of such panchnama, the detenu's constitutional right to representation is adversely affected and the order of detention would, therefore, be vitiated. In support of this contention, Mr. Dave, the learned advocate appearing for the petitioner, has relied upon the decision of this Court in the matter of Amrutbhai Prabhatbhai Saraniya v. The Commissioner of Police, Baroda City & Ors. [Special Criminal Application No. 2071 of 1993 : decided on 31st August, 1994 :: Coram : Messrs. Justice B.S Kapadia & N.J Pandya]. In the said matter a similar contention was raised before the Bench and the contention was contested on the ground that panchnama in question was not relied upon by the Detaining Authority for arriving at the subjective satisfaction in respect of the detenu's nefarious activities and his being a dangerous person, as defined in the Act. While dealing with the said contention, the Bench held that, 'the panchnama in a pending investigation particularly in a case under the Bombay Prohibition Act has its own significance .... It necessarily precedes the FIR and discloses the offence primarily in the manner described in the panchnama.... But the FIR itself is clear on the point and in our opinion, it is definitely referred to so far as the FIR is concerned and in fact, that would form the basis of FIR. In the background of the aforesaid details, in our opinion, when the contention advanced on behalf of the

detenu ... .... non supply of the said document in our opinion, would prejudice the detenu's right of making an effective representation.'

4. In view of the above referred binding decision, even if the Detaining Authority does not rely upon the search and seizure panchnama which is the basis for lodging the FIR against the detenu and if the matter is pending investigation, the detenu is entitled to receive a copy of such panchnama so as to enable him to make an effective representation against the order of detention. In the present case also, the contention has been defended on the ground that the Detaining Authority, while arriving at the subjective satisfaction in respect of the petitioner's nefarious activities and of his being a dangerous person, as defined in the Act, had not relied upon the said panchnama. It is not disputed that the aforesaid offence registered against the petitioner is pending investigation and the FIR does refer to the panchnama extensively. Hence, it was necessary for the Detaining Authority to furnish a copy of the said panchnama to the petitioner herein irrespective of the fact that the Detaining Authority had not relied upon it while making the order of detention. Since admittedly in the present case, petitioner has not been served with a copy of the said panchnama, it must be held that the petitioner's right to make effective representation against the order of detention has been seriously prejudiced. The order of detention, therefore, cannot be sustained.

5. In view of the above discussion, the petition succeeds. The impugned order of detention dated 13th August, 1998 [Annexure 'A' to the petition] is hereby quashed and set-aside. Rule is made absolute. The petitioner; unless required in some other case, be released forthwith.

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Prakash\*